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F. As used in these stipulated facts, the words "master" or "master recording" include any and all of the following: master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is recorded and from which the transferred recorded sounds are directly or indirectly derived.

G. Insofar as is relevant and material to this action, the business in which each of the individual plaintiffs is engaged is conducted as follows:

1) Plaintiffs purchased on the open market long playing phonograph records which have been manufactured and sold through the usual commercial channels by commercial record companies. Those phonograph records contain recorded performances of musical compositions by recording artists or groups of artists and by supporting musicians and in some cases by supporting vocalists. Those records are commercially available to the public through various retail outlets. The record companies which manufacture and sell those records have by contract acquired all rights and consents of such artists, musicians, vocalists and any other persons from whom such rights or consents must be obtained to sell those records in the manner hereinabove described. The record companies which manufacture and sell those records commercially exploit them and expend great efforts and substantial sums of money for such commercial exploitation. Some of those records have substantial gross sales and an album which is very popular may have gross sales in excess of one million dollars. There are affixed to each of those records and to each of the packages in which they are sold labels

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Not Stipulated by Pltffs, but no offer of proof to contrary - facts now if controverted - subj. to reliance by Pltff

which state the title or name of the album, the name of the recording artist or group of artists whose recorded performances are embodied therein, and the name of the record company. Such phonograph records are generally referred to as "albums". An album is a phonograph record which usually contains from 10 to 12 recorded performances of one artist or group of artists and which is usually played at a speed of 33-1/3 rpm. The name or title of the album is designated by the record company and often is the name or title of one of the musical compositions of which a recorded performance is embodied in that album.

ditto 4/20/70 Att

2) Plaintiffs use various mechanical and electronic devices to transfer the exact sounds recorded on each album (which sounds comprise the exact recorded performances embodied on that album) to magnetic tapes which plaintiffs then package in plastic cartridges. Plaintiffs sell those cartridge-enclosed tapes of the recorded performances transferred from the album both at wholesale and at retail for a profit. Such cartridge-enclosed tapes are known commercially and to the general public as "tape cartridges" or, simply, "cartridges".

"copy by transferring" language inserted upon by Pltff in lieu of "transfer" language inserted upon by Def

Att 4/21/70

3) Plaintiffs sell tapes and cartridges which they make in the aforesaid manner in interstate commerce, and use the United States mail to advertise such tapes and cartridges, to solicit customers of such tapes and cartridges and to ship such tapes and cartridges to such customers.

///

4) Tape cartridges are presently manufactured and sold in two configurations: "4 track" and "8 track". Some commercial record companies or their licensees who manufacture authorized tapes (as that term is hereinafter defined) manufacture cartridges in both configurations and a few on "8 track" only. However, at this time the trend in the record industry is moving away from the "4 track" configuration to the "8 track" configuration. Plaintiffs also make both "4 track" and "8 track" tapes. Plaintiffs transfer onto "4 track" tapes some recorded performances which are not available in authorized tapes of that configuration.

5) Plaintiffs Pressman and Koven transfer onto tapes recorded performances contained in albums which have had great commercial success. Plaintiffs Holmquist transfer onto tapes recorded performances from albums which have had great commercial success and also transfer onto tapes recorded performances from some albums which have had lessor commercial success. ~~when there is a demand for such tapes.~~

6) Plaintiffs affix to each tape cartridge containing recorded performances which plaintiffs have transferred from a record album in the manner described above, a label which states the title or name of the record album from which that tape has been transferred and the name of the recording artist or group of artists whose recorded performances have been transferred onto that tape. Each such tape cartridge also contains a label which states the following:

"No relationship of any kind exists between

[plaintiffs] and the original recording company nor between this recording and the original recording artist. This tape is not produced under a license of any kind from the original company nor the recording artist(s) and neither the original recording company nor artist(s) receives a fee or royalty of any kind from [plaintiffs]. Permission to produce this tape has not been sought nor obtained from any party whatsoever."

7) Plaintiffs do not seek or obtain the consent of any of the record companies which manufacture the albums, or the consent of the owners of the master recordings used to manufacture those albums, or the consent of any of the performers, musicians or vocalists whose performances have been recorded on such master recordings or albums, to transfer the sounds comprising such recorded performances or to sell tapes of those recorded performances.

Par. 8 Eff. Object Irrelevant Overruled HH 4/20/70

8) In connection with the tapes which plaintiffs manufacture and sell as herein described, plaintiffs do not employ, or make any payments to, any person included within or who is a member of any of the following classes or groups of persons:

(a) Record companies or owners of master recordings;

(b) Recording artists, that is, persons who perform as vocalists or lead musicians in the pro-

duction of recorded performances;

(c) Musicians who render services in connection with the production of recorded performances;

(d) Technicians of any kind or engineers who render services in connection with the production of recorded performances;

(e) Pension funds, welfare funds, or any trust funds established by or in any way connected with any labor union or organization, or any organization of musicians or any organization of performers;

(f) Owners or suppliers of recording studios or other facilities or equipment used in the production of recorded performances.

9) Plaintiffs incur costs in transferring recorded performances onto tapes and in selling tapes containing such recorded performances as follows:

(a) Purchase or rental of the mechanical and electronic equipment used to transfer recorded performances from albums to tapes;

(b) Purchase of tape, blank cartridges, labels and other materials and supplies;

(c) Payment of one or more persons (or the value of their own time) to operate the machine used to transfer the recorded performances, to

splice and assemble tapes containing the transferred recorded performance, to control quality, to ship; and

(d) Costs of making sales.

H. The payment or non-payment of royalties to the proprietors of copyrights of musical compositions is not relevant to any issue or question before the court in this action and neither plaintiffs nor defendants shall attempt to offer or introduce any evidence on that subject. Plaintiffs and defendants further stipulate that none of them shall attempt to offer or introduce any evidence in this action with respect to plaintiff TIAA.

I. There is no prosecution for violation of Section 653(h) of the California Penal Code presently pending by the office of the District Attorney of the County of Los Angeles or by the office of the City Attorney of the City of Los Angeles against any plaintiff in this action or against any other person. No such prosecution has ever been initiated to the date hereof.

J. If a complaint or request for complaint is presented to the appropriate member of the staff of the District Attorney or the City Attorney against the individual plaintiffs herein and such complaint or request for complaint presents the facts which are now known to the District Attorney and the City Attorney, including the facts derived from this lawsuit, the office of the District Attorney or the office of the City Attorney would issue a criminal complaint charging the individual plaintiffs with violation of Section 653(h) of the California Penal Code if, in their discretion, they believe that there is evidence to establish beyond a reasonable doubt each and every element of the offense defined by that section. From the effective date of Section 653(h) of the Penal

Pen. J. object by Pltffs-overruled - as to lines 30-32, only with "selection".

Code and to this date, no complaint or request for complaint under Section 653(h) has been made to the office of either the District Attorney or the City Attorney against any plaintiff in this action or against any other person.

K. Defendants refuse to stipulate or state that they will not prosecute plaintiff for violating Section 653(h) of the California Penal Code based on the facts which they now know.

L. Insofar as they may be relevant and material to this action, the following facts pertain to the commercial record industry in the United States and the production, distribution and sale of recorded performances of musical compositions by commercial record companies.

1) A "musical composition" consists of a tune or melody (the music) which may or may not be accompanied by lyrics. There are an infinite number of arrangements and renditions of any one popular musical composition. A recorded performance of such a musical composition consists of one particular rendition by one particular artist or group of artists, usually with, but sometimes without, supporting musical or vocal accompaniment, of one particular arrangement of that musical composition. There may be many different recorded performances of a single musical composition, and of different arrangements of that composition, rendered by numerous different recording artists and sometimes even different versions of different arrangements rendered by the same recording artist. Such different recorded performances may have substantial variations and differences between them.

///

2) The "albums" which have been referred to in this stipulation are long-playing disc phonograph records. In addition to the market for such albums there is at the present time in the United States a large market for pre-recorded tapes or tape cartridges of recorded performances of popular music. The record companies which manufacture and sell albums also either themselves manufacture or license others, for a fee, to manufacture pre-recorded tapes of the same recorded performances embodied on the albums which they manufacture and sell. (Such tapes are hereinafter referred to as "authorized tapes", since they are manufactured and sold either by the owner of the master recording or under license from that owner.) Authorized tapes are sold in packages which bear labels containing the name of the record company which manufactures and sells that album, the name or title of the album, and the name of the recording artist or artists whose performances are embodied therein.

3) There are at the present time at least 900 commercial record companies in operation in the United States. During 1968, which is the last year for which such figures are available, the sale of phonograph records by those record companies in the United States had a list price value of at least 860 million dollars. During the year 1968 at least 150 United States record companies licensed other persons to manufacture pre-recorded performances owned or manufactured and distributed by those record companies. In that year there were approximately 120 manufacturers of authorized tapes in the United States. The best estimates presently available are that in the year 1968 the sale of authorized tapes had a retail list value of at least 250 million dollars

4) The production of a master recording of a performance of a musical composition used to manufacture records and authorized tapes usually requires the services of the following persons: an arranger; copyists to prepare copies of the arrangement for all of the performers and musicians; the recording artist or group of recording artists; instrumental and vocal accompanists, including their leader; a producer; and sound engineers and technicians. The record company pays all of the foregoing persons for their services either at rates prescribed by applicable collective bargaining agreements with the several labor unions involved or at rates negotiated by the record companies with those persons. (Of course, in cases where there is an applicable union contract, the negotiated rates must be higher than those prescribed by that contract.) In addition to the foregoing costs, the record company incurs other costs in connection with creating a recording of a performance of a musical composition, such as, studio and equipment rental, and mastering, editing and other processing costs. Record companies also incur substantial expenses in manufacturing records and authorized tapes and in packaging, advertising, promoting and selling albums and authorized tapes.

5) The master recording of a popular song is produced in the following way in a recording studio. The recording artist or group of artists and the instrumental and vocal accompanists render many performances of the selected arrangement of that song. Each of those performances is electronically recorded on tape by the sound engineers and

technicians. The producer works with the recording artist or group to create and achieve the desired "sound" of that particular performance. The background music may be recorded at one or more recording sessions and the performance of the featured recording artist or group of artists may be recorded separately at other recording sessions. After recording is completed, the producer, the engineers and technicians, and sometimes the recording artist work together to combine and blend together the various taped performances or portions of those performances to create the final version of that performance as they wish it to sound on the records sold to the public. The entire process takes many hours or even days or weeks to complete. Since an album ordinarily consists of from 10 to 12 different recorded performances, this process is necessarily repeated for each recorded performance embodied on the album.

6) Record companies also incur the following additional costs in connection with the manufacture and sale of phonograph records and authorized tapes: royalties to the recording artist or artists; royalties to the several trust funds which have from time to time been established by agreements between the record companies and the American Federation of Musicians; royalties to the separate trust funds established by agreement between the record companies and the American Federation of Television and Radio Artists; and frequently, royalties to the producer of the recorded performance. The record company is additionally obligated to make separate payments or contributions to various pension funds and other funds which have from time to time been established by agreements between the record companies and other applicable unions. Almost all, if not all, of

the foregoing royalty payments and contributions are based on the number of records and authorized tapes of each recorded performance manufactured and sold.

IV.

RESERVATIONS AS TO STIPULATED FACTS

A. Defendants contend that the facts set forth in each of the following paragraphs are not relevant to the issues in this action for the reasons stated:

1) Paragraph III G(3), for the reason that the means, methods or avenues used by plaintiffs to sell duplicated tapes of recorded performances is not relevant to the legality of plaintiffs' making and selling such tapes. Defendants contend that plaintiffs' conduct amounts to theft and that plaintiffs cannot validate that theft by claiming that they sell the stolen article in interstate commerce or through the mails.

2) Paragraph III G(4), for the reason that the configuration in which plaintiffs make tapes containing duplicated recorded performances is irrelevant to this action; for the reason that whether there are authorized tapes available in a particular configuration of a particular recorded performance is not relevant to the legality of plaintiffs' unauthorized transferral of recorded performances onto tapes; and for the reason that whether there is any demand for plaintiffs' duplicated tapes is not relevant to the legality of their

Stipulation and Order Pursuant to Minute Order of April 27, 1970, Record at 420-423.

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FILED
MAY 4 1970
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY [illegible] DEPUTY

RECEIVED
APR 30 1970
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY [illegible] DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TAPE INDUSTRIES ASSOCIATION OF AMERICA, etc., et al., Plaintiffs, vs. EVELLE J. YOUNGER, District Attorney, et al., Defendants.	NO. 68-1938-AAH and ORDER STIPULATION PURSUANT TO MINUTE ORDER OF APRIL 27, 1970

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, attorneys of record for all plaintiffs and all defendants in this action that the following facts are the facts which the court requested pursuant to the minute order filed in this action on April 27, 1970:

Plaintiffs purchase a phonograph record album (as defined in the Pre-Trial Conference Order) on the open market. That record album is placed on a record player (a turntable with a playing arm and amplifier) which is in turn connected to a tape recorder. That record is played on the record player so connected, and a tape recording is thereby made of that record. After that tape recording has been made in that fashion the tape containing it is placed on a machine which is known as a "tape playback deck". That tape playback deck is connected to machines (known as "tape slaves") which can in turn make other tape recordings of the sounds embodied on the tape which has been made from the record album. A large number of tape slaves may be connected to one tape playback deck so that a number of tape recordings may be made at one time. The number of tape slaves which are actually used depends upon the number of tapes which the plaintiffs desire to make at any one time. After tape recordings have been made by use of the tape playback deck and the tape slaves, each of the tape recordings which has been made on the tape slaves is placed on a hub. Each hub and tape is placed into a plastic cartridge, and the tape is spliced together so that it forms a continuous "loop" in the cartridge. The cartridge is sealed, tested, packaged and labeled with the labels described in paragraph III G (6) on pages 6 and 7 of the Pre-Trial Conference Order.

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The Pre-Trial Conference Order shall be deemed amended to include the foregoing facts.

Dated: April 30, 1970.

BEARDSLEY, HUFSTEDLER & KEMBLE
CHARLES E. BEARDSLEY
ARTHUR LEEDS

By _____
ARTHUR LEEDS
Attorneys for Plaintiffs

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By _____
PHILIP E. GREY
Attorneys for Defendant, Roger Arnebergh, City Attorney of the City of Los Angeles

IT IS SO ORDERED THIS 4th DAY OF May, 1970.

_____
A. ANDREW HAUK
United States District Judge

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April 30, 1970

Mr. Edward J. Maldonado
Deputy Clerk of the
United States District Court
Central District of California
312 North Spring Street
Los Angeles, California

Re: Tape Industries Association of America, et al., vs. Evelle J. Younger, District Attorney, et al., Case No. 68-1938-AAH

Dear Mr. Maldonado:

We are causing to be delivered to you herewith the original and three copies of a stipulation which all counsel have entered into, pursuant to the minute order of Judge Hauk. Would you please present this stipulation to Judge Hauk at the earliest possible time and inquire of him if he is satisfied with the stipulation and if he believes that it adequately and clearly discloses the facts to which he requested the parties stipulate.

All counsel shall be happy to do the utmost to clarify the stipulation if Judge Hauk believes that it needs clarification.

Please call to Judge Hauk's attention the fact that the enclosed stipulation provides for amendment of the Pre-Trial Conference Order and thus requires his approval. A place has been provided for his signature.

Very truly yours,

Arthur Leeds

Robert C. Lynch

Howard S. Smith

Philip E. Grey

HSS:jym

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Affidavit of Melvin Lewinter, Record at 597-599.

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FILED

JUN 19 1970

CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TAPE INDUSTRIES ASSOCIATION OF AMERICA, a California corporation, et al,	)	
Plaintiffs,	)	NO. 68-1938-AAH
vs.	)	
EVELLE J. YOUNGER, District Attorney, County of Los Angeles, et al,	)	
Defendants.	)	

AFFIDAVIT OF MELVIN LEMINTER

CONTROLLER OF ATLANTIC RECORDING CORPORATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

MELVIN LEVINTER, being duly sworn, deposes and says:

I am the controller of Atlantic Recording Corporation, of 1841 Broadway, New York, New York (hereinafter called "Atlantic").

1. In this capacity, I am familiar with Atlantic's books and records.

2. The album by Crosby, Stills and Nash, SD 8229, has been on the Billboard charts for forty-six (46) consecutive weeks, and at its peak reached the Number 6 position on that chart.

3. Gross sales by Atlantic in the United States, of this album in disc form are in excess of 1,100,000 copies through March 31, 1970. Gross sales of this album by Atlantic in the United States in the form of pre-recorded tape are in excess of 100,000 copies through March 31, 1970; while Atlantic's licensee, Ampex Corporation, had sales in excess of 70,000 copies through December 31, 1969.

4. The cost of recording said album was approximately $30,000.00.

5. The costs of advertising and promoting this album are estimated at being between $20,000.00 and $30,000.00. Atlantic's costs for manufacturing discs and pre-recorded tapes

POOR C

of this album exceed $600,000.00. Payments to publishers and writers of the music contained in these albums based upon the aforesaid sales amounts to over $250,000.00. Gross earnings by the performing artist as a result of these records are in excess of $500,000.00.

MELVIN WINTER

Sworn to before me this 25th day of May, 1970.

NOTARY PUBLIC

MYRON S. MAYER
NOTARY PUBLIC, State of New York
No. 31-7778050
Qualified in New York County
Term Expires March 30, 1972

OPY

Testimony of Murray Gitlan, Reporters Transcript at 45-59.

been before you two counsel for a long time. Then let's not get into any harangue about this thing at this time.

MR. SMITH: Your Honor, may I at this time call one witness, Mr. Murray Gitlan?

JUDGE TRASK: Mr. Gitlan, step forward, please.

MURRAY GITLAN,

called as a witness by and in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated. State your name for the record, please, and spell your last name.

THE WITNESS: Murray Gitlan, G-i-t-l-a-n.

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Gitlan, what is your present occupation?

A I'm the controller of Warner Bros. Records.

Q How long have you been so employed?

A Approximately seven years.

Q And is it one of the duties of your job to be in charge of the various bookkeeping records of Warner Bros. Records?

A Yes.

Q Those records are maintained now on computers, are they not?

A For the most part.

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Q Mr. Gitlan, there is in evidence a recording of "The Association". Have you seen that album before?

A Yes.

MR. SMITH: May I approach the witness, your Honor?

JUDGE TRASK: Yes.

MR. SMITH: I will give you, Mr. Gitlan, another pressing of that album so you can have it in front of you when you testify.

JUDGE HAUK: You are talking about Exhibit E?

MR. SMITH: Yes, your Honor.

THE CLERK: Exhibit D.

JUDGE HAUK: What are we talking about? My clerk says it's Exhibit D. Which exhibit is it? Mine shows E. Mr. Clerk, let's get it straight.

MR. SMITH: It says Exhibit D. I switched labels.

JUDGE HAUK: D is "Crosby, Stills & Nash."

THE CLERK: Counsel had switched labels.

MR. SMITH: This is E and this was D (indicating). This is D, your Honor.

JUDGE TRASK: What is this?

MR. SMITH: "The Association."

JUDGE HAUK: I have D marked as "Crosby, Stills & Nash" and it conforms to A. Let's get it straight.

JUDGE TRASK: That's the way I have it.

POOR CO

MR. LEEDS: That's the way I have it also, your Honor.

JUDGE HAUK: And I have marked as E "The Association" which conforms to Exhibit B.

JUDGE WHELAN: Will the clerk then conform the marking to the record?

THE CLERK: Yes, sir.

JUDGE HAUK: Strike out the others and get those stickers off of there. Get the old stickers off, Mr. Smith.

MR. SMITH: It's coming off, your Honor. It's coming off.

JUDGE TRASK: Now in order to get the record straight, when your adjustments have been made, Exhibit A is a tape duplication by Koven of "Crosby, Stills & Nash"; is that correct?

MR. SMITH: I believe that is correct, your Honor.

JUDGE TRASK: And Exhibit D is the disc phonograph record which was made from tape A; is that correct?

MR. SMITH: Yes, sir.

Q Referring you, Mr. Gitlan --

JUDGE TRASK: Just a minute. And B and E are now the counterparts of each other, the related documents, or exhibits, B and E?

MR. SMITH: That's correct, your Honor.

JUDGE TRASK: All right, proceed then.

BY MR. SMITH:

Q Mr. Gitlan, directing your attention, sir, to Exhibit E in evidence, a duplicate of which is before you, what is the Warner Bros.'s catalogue number of that record?

A The disc? WS 1800.

Q All right. Will you tell me, sir, does Warner Bros. records have in its bookkeeping and accounting records informations for a six-month period ending March 31, 1970, with respect to the sales of this disc?

A Yes.

Q What were the sales figures, sir?

A Approximately $549,000.

Q For just that six-month period?

A Yes.

Q Do the accounting and bookeeping records of Warner Bros. Records show how much the costs to produce the master from which this album was produced were?

MR. LEEDS: Objection, your Honor. The cost to produce is not an issue here.

JUDGE TRASK: Overruled.

THE WITNESS: The cost to produce said master was $71,000.

BY MR. SMITH:

Q Does Warner Bros. have bookkeeping and accounting records which indicate for the six-month period ending March

POOR C

31, 1970, what its total wholesale value of phonograph records manufactured and sold by Warner Bros. was?

MR. LEEDS: Objection, your Honor. Now we're getting to the question of all the value of records that are sold by Warner Bros.

JUDGE TRASK: Overruled.

THE WITNESS: The answer to that is sixteen million dollars.

BY MR. SMITH:

Q You are rounding off, I take it, to the nearest million?

JUDGE HAUK: When you say "value", you mean income?

MR. SMITH: The wholesale --

THE WITNESS: No, your Honor, this is net sales.

JUDGE HAUK: Net sales of all your records. All right.

BY MR. SMITH:

Q At wholesale; is that correct?

A That's correct.

JUDGE WHELAN: For a six-month period?

THE WITNESS: Yes.

BY MR. SMITH:

Q What do the bookkeeping and accounting records of Warner Bros. records, Inc. show as the total cost of producing the masters?

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MR. LEEDS: Objection, your Honor, irrelevant -- excuse me. I'm sorry.

JUDGE TRASK: Make your objection.

MR. LEEDS: I don't know if counsel is finished.

MR. SMITH: That's all right.

MR. LEEDS: Objection is immaterial and irrelevant.

JUDGE TRASK: Overruled.

BY MR. SMITH:

Q The total cost for making all masters and state the period of time to which you are referring.

JUDGE HAUK: To this six-month period.

THE WITNESS: Yes. One million six hundred thousand dollars.

BY MR. SMITH:

Q That's the cost incurred by Warner Bros. in that six-month period to produce masters from which records are made; is that correct?

A That's correct.

Q What, sir, were the total advertising expenditures by Warner Bros. records in connection with the Warner's and Reprise labels for this six-month period?

MR. LEEDS: Objection, your Honor; irrelevant and immaterial.

JUDGE TRASK: Overruled.

THE WITNESS: One million one hundred thousand

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dollars.

JUDGE WHELAN: That's from all of your records?

THE WITNESS: That's correct, your Honor.

BY MR. SMITH:

Q Do you keep --

A It includes all forms of advertising.

Q Mr. Gitlan, you don't keep advertising expenditures by record, do you?

JUDGE WHELAN: By individual records, you mean?

MR. SMITH: Yes.

THE WITNESS: Yes, the answer to that is we attempt to. We attempt to recapture some of the direct advertising and promotion, not by record but by artist.

So actually I would not be in a position to state the amount of advertising that we have expended on that particular album.

JUDGE HAUK: On that particular album meaning Exhibit E?

MR. SMITH: Exhibit E, yes.

Q Do you have available, sir, information which would indicate whether or not this particular album, Exhibit E, was ever on the "Billboard" top one hundred chart?

MR. LEEDS: Objection, your Honor, as irrelevant and immaterial.

JUDGE TRASK: Overruled.

BY MR. SMITH:

Q You may answer, Mr. Gitlan.

A Yes, I believe that the "Billboard" has already been submitted, has it not?

Q No, I'm asking you, sir, if at any time this record was ever on the "Billboard" top one hundred chart?

A Oh, yes.

JUDGE HAUK: When was that, within the last year?

THE WITNESS: Yes.

BY MR. SMITH:

Q This record, "The Association", Exhibit E was first released in August, 1969; is that correct, sir?

A Yes.

Q So your sales figures which you gave us in the prior part of your testimony don't cover all sales of the record, but only those made within the last six months; is that correct?

A Well, the last six months really started September 1st and the record was released in very late August. I would think that it substantially covered most of those sales.

JUDGE WHELAN: Up to March?

THE WITNESS: That's correct.

JUDGE WHELAN: Or through March?

THE WITNESS: Up through March.

POOR

BY MR. SMITH:

Q Through the end of March, Mr. Gitlan?

A Yes.

MR. SMITH: Fine. No further questions, your Honor.

JUDGE TRASK: Cross.

MR. LEEDS: Yes, your Honor.

CROSS EXAMINATION

BY MR. LEEDS:

Q Mr. Gitlan, you testified, I believe, that the cost to produce the master of the record was $71,000. Could you tell us what items you are including in that cost, please?

A Yes. I would say that would include the musicians' salaries, arrangers' salaries. That would include all studio time and related studio charges. It would include payments to producer, to copyists, et cetera.

Q I'm sorry. Copyists? I'm not sure I understand what that is.

A A copyist is an individual who takes material that has been arranged by an arranger and he copies it so that each of the musicians has his particular statement that he is about to play, his score.

Q Does the $71,000 figure, and I think the million six hundred thousand dollar figure which you gave us for

COPY

the total costs of masters to produce, does that include royalties of any kind?

MR. SMITH: Objection, your Honor. Unless Mr. Leeds limits it to a kind of royalty, it gets beyond the scope of the pretrial conference order.

JUDGE TRASK: The objection will be overruled. Go ahead.

THE WITNESS: Would you repeat the question, please.

JUDGE HAUK: Does it include royalties?

THE WITNESS: No.

BY MR. LEEDS:

Q Now you say that there were gross sales of the record in question of "The Association", of five hundred and forty-nine thousand dollars. Do you know how many copies of the record that includes?

In other words, how many copies were sold?

A I would have to divide backwards now. I would say approximately two hundred and thirty thousand.

JUDGE WHELAN: The records were sold by your company -- the album was sold at something over $2.00 by your company per individual album?

THE WITNESS: That's correct.

BY MR. LEEDS:

Q So that we can, for our own sake, figure out how

POOR C

many album copies you sold. You said there were sixteen million dollars net sales. If we applied the $2.00 would it be correct in assuming that there were approximately eight million copies sold?

JUDGE WHELAN: You mean on all of the master records pressings?

MR. LEEDS: I don't think we are talking about the sale of master records, your Honor. We are talking about copies from that.

JUDGE WHELAN: I say of all the master records pressings.

MR. LEEDS: Yes, your Honor.

JUDGE WHELAN: First, are they all sold at the same price?

THE WITNESS: No.

BY MR. LEEDS:

Q Can you give us, roughly then, approximately how many record sales you have had during the past six months, the period in which you have been giving us figures for?

A I can make a guess.

JUDGE TRASK: An estimate, your best.

THE WITNESS: My estimate would be that there would be approximately six million albums and there would also approximately be about another three million singles, something of that nature.

OPY

MR. LEEDS: I have no further questions.

JUDGE TRASK: Any further redirect?

REDIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Leeds asked you if the cost of producing the master included any royalties and you answered in the negative. What did you understand the word "royalties" to mean?

A What did I --

Q When you answered that question in the negative, what was your understanding of the meaning of the word "royalties"?

A Well, my understanding of a royalty is an artist's participation in the unit sales, which I think is a percentage of retail or a unit rate per album.

Q Do you know, sir, if the record artists who were the featured artists of this album received some participation?

A Yes.

Q They do receive a participation?

A Yes.

Q All right. So Warner Bros. pays, in addition to the costs you have testified to, some sum to the artists as their share of the sales; is that correct?

A That's correct.

JUDGE WHELAN: And that's pursuant to a contract

POOR C

between the ASCAP or some other organization and the association of phonograph makers?

THE WITNESS: Pursuant to a contract: That's between the artist and Warner Bros.

MR. SMITH: The contract, your Honors, is between the recording artist and Warner Bros. And then Warner Bros., under the stipulated facts in the pretrial conference order, would make other payments to various labor organizations. And that's covered by the pretrial conference order. I don't intend to inquire of this witness on that subject.

No further questions, your Honors.

JUDGE HAUK: Let me ask you this: What do you estimate the so-called royalty to musicians was in addition to the $71,000 with respect to Exhibit E?

THE WITNESS: The amount that the record company would pay to the A.F. of M. Pension and Trust Fund. Is that the question?

JUDGE HAUK: And the artist in addition to that $71,000, roughly.

THE WITNESS: I would say that the combined total would be approximately a hundred thousand dollars.

JUDGE HAUK: You say an additional thirty thousand went to artists and the American Federation of Labor for sick benefits and pensions and so on?

MR. SMITH: Excuse me, your Honor, if I may --

OPY

JUDGE WHELAN: Let's have his last answer read.

(Record read.)

JUDGE TRASK: Now Mr. Witness, would you please tell us what is the hundred thousand dollar payment, what is it for and who is it to, that you just testified are the royalties to the artists?

THE WITNESS: The A.F. of M. fund, you mean you want to break it down, split it?

JUDGE TRASK: Please.

THE WITNESS: I would say that probably about $12,000 would be to the A.F. of M. Fund and the balance would be to the artists.

JUDGE HAUK: What balance?

THE WITNESS: Eighty-eight thousand dollars, your Honor.

JUDGE HAUK: And that's all in addition to the seventy-one thousand you previously testified to as the cost of the master records?

THE WITNESS: That's correct.

JUDGE TRASK: Any further questions?

MR. SMITH: Yes, I just want to clear up the question of royalties.

Q You have now told us that $71,000 did not include royalties to artists. Did it include royalties to composers?

POOR C

A No.

MR. SMITH: I have no further questions.

MR. LEEDS: I have no further questions.

JUDGE HAUK: Can you give us an estimate on that in this Exhibit E how much was paid to composers?

MR. LEEDS: May I interject? The pretrial order does say that the question of royalties to composers is not relevant.

JUDGE HAUK: Yes, it's not an issue, that's true.

MR. SMITH: The only reason I asked was to find out if that was part of the $71,000. That was the only point of my question.

JUDGE HAUK: I'll withdraw my question.

JUDGE TRASK: Do you have any further questions, counsel?

MR. SMITH: We have no further questions.

THE COURT: You may step down, sir.

JUDGE TRASK: Mr. Smith, do you have any further evidence?

MR. SMITH: No further evidence, your Honor.

JUDGE TRASK: Then this concludes all of the preliminary evidence with respect to the matter at issue; is that correct?

MR. LEEDS: Yes, it does, sir, as far as I know.

JUDGE TRASK: And all evidence then is in with

OPY

Affidavit of Sanford I. Wolff, Record at 21-24.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT

OF UTAH, CENTRAL DIVISION

TAPE HEAD COMPANY, INC., a Utah corporation R.A. RIDGES DISTRIBUTING CO., INC., a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED,	:	CIVIL ACTION NO. C-255-71
Plaintiffs,	:	AFFIDAVIT
-against-	:	
R C A CORPORATION, a/k/a RADIO CORPORATION OF AMERICA, a Delaware corporation, COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation, AMERICAN BROADCASTING CO., INC. a New York corporation, and AMPEX CORPORATION, a California corporation,	:	
Defendants.	:	

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

SANFORD I. WOLFF, being duly sworn, deposes and says:

1. I am the National Executive Secretary of the American Federation of Television and Radio Artists (AFL-CIO), a labor organization which represents every vocal performer and recording artist, whether or not under contract to a record manufacturer, whose performance appears on records or tapes manufactured by the defendants and all other sound recording manufacturers.

POOR COPY

2. On behalf of the vocal performers and recording artists whose artistic efforts are incorporated in the sound recordings which have been and are being duplicated without authorization by tape and record pirates, we wish to call to the attention of the Court the grave harm and injustice being done these vocal performers and artists by the manufacture, distribution and sale of unauthorized duplications.

3. Recording artists and performers are directly and injuriously affected by the wide sale of unauthorized duplications of phonograph records and tapes in the following respects:

A. Vocal performers and recording artists frequently depend on large sales of their records and tapes for their income through royalties and fees for subsequent performances. Obviously they can and do receive credit only for the sales by the legitimate manufacturers and authorized duplicators as to which sales figures can be established. No payments whatsoever have been or are being received by these performers and artists from unauthorized duplicators.

B. The prestige and future earning capacity of vocal performers and recording artists are enhanced by and generally proportional to the large volume sales of their recordings by the record companies and, in particular, those sales which top the one million mark. The unauthorized duplicators

select only those recordings which are obviously successful or well on their way to success and thus siphon off a major part of the potential sales volume of legitimate manufacturers. In many instances the performers and recording artists do not thus get either remuneration for nor the prestige of having a million record or tape selling recording even though the combined sale of legitimate and pirated versions can be substantially above that figure.

C. The unauthorized duplicators of sound recordings, without permission of the performers and recording artists, appropriate and use on their illicit products not only the recorded sounds but the names and in some instances the pictures of those performers and recording artists. It is clear that without appropriating and using such names and pictures the unauthorized duplications will find no public acceptance whatever.

D. The bona fide record companies pursuant to their agreements with AFTRA pay a contribution equal to 6½% of the artist's earnings in the record industry to the AFTRA Pension and Welfare Funds. The AFTRA Pension and Welfare Funds are jointly administered by industry and Union Trustees and in

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PY

order to qualify for benefits thereunder an artist must earn at least $1,000 per year in covered employment. The benefits to the artist and his family are exceedingly substantial and artists suffer irreparable harm if proper payments are not made to the Pension and Welfare Funds on their behalf so that they can qualify in time of need or want. Obviously the record pirates who illegally duplicate and sell records embodying the performances of the artist and do not pay to the AFTRA Pension and Welfare Funds are damaging the artists and their families most severely.

4. Were this Court to, in effect, give its sanction to the wrongful acts of unauthorized duplicators of sound recordings and the sellers thereof, the direct and indirect injury to the performers and recording artists of this country would be disastrous and irreparable. It is our view that the injunction sought herein by the plaintiffs would be most unjust and a most serious injury to the performers and recording artists whose artistic efforts are encompassed in the unauthorized duplications of their performances.

Sworn to before me this

day of November, 1971.

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Affidavit of Henry Kaiser, Record at 25-26.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT

OF UTAH, CENTRAL DIVISION

TAPE HEAD COMPANY, INC., a Utah corporation R. A. RIDGES DISTRIBUTING CO., INC., a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED, Plaintiffs, vs. R C A CORPORATION, a/k/a RADIO CORPORATION OF AMERICA, a Delaware corporation, COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation, AMERICAN BROADCASTING CO., INC., a New York corporation, and AMPEX CORPORATION, a California corporation Defendants	CIVIL ACTION NO C-255-71 AFFIDAVIT

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

HENRY KAISER, being duly sworn, deposes and says:

1. I am the General Counsel of the American Federation of Musicians (hereinafter called"AFM"), a labor organization representing musicians throughout the United States and Canada.

2. The AFM has entered into collective bargaining agreements with all producers of phonograph records which embody the performances of musicians. As a result of such collective bargaining agreements, payments are made by those record-producing companies to various trust funds for each and every record sold embodying their performances. Half of those payments go to the

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musicians who performed on the records. The remainder is used for free public concerts of live music employing AFM members.

3. Those trust funds never received any payments from manufacturers of tapes that are sold by the Plaintiffs in this action. Consequently, AFM members are deprived of direct income and of income from employment on concerts which are free to the public.

4. No musician who is a member of the AFM has ever consented to or authorized the manufacturers of tapes sold by the Plaintiffs to use their performances by the Plaintiffs selling such tapes. Musical artists who are members of the AFM are being deprived of large amounts of monies properly due them.

HENRY KAISER

Sworn to before me this

18th day of November, 1971

Notary Public, State of New York
No. 41-2181175 Queens County
Term Expires March 30, 19...

LEONARD KOSOFSKY
Notary Public, State of New York
No. 41-2181175 Queens County
Term Expires March 30, 19...

24

POOR COPY

Affidavit of Kenneth E. Raine, Record at 27-28.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT

OF UTAH, CENTRAL DIVISION

TAPE HEAD COMPANY, INC. a Utah corporation R. A. RIDGES DISTRIBUTING CO., INC. a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED, Plaintiffs, vs. R C A CORPORATION, a/k/a/ RADIO CORPORATION OF AMERICA, a Delaware corporation, COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation, AMERICAN BROADCASTING CO., INC. a New York corporation, and AMPEX CORPORATION, a California corporation Defendants	CIVIL ACTION NO. C-255-71

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

KENNETH E. RAINE, being duly sworn, deposes and says:

1. I am Trustee for the Music Performance Trust Funds. The Music Performance Trust Funds have been established for the purpose of providing live performances of musicians in free public concerts for the general public benefit. The Music Performance Trust Funds not only provides the employment for musicians throughout the United States but fosters the enjoyment of music as a cultural art form.

2. The Music Performance Trust Funds have entered into agreements with all producers of phonograph records and tapes

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embodying music. Under such agreements, phonograph record and tape producers pay the Music Performance Trust Funds a royalty on every record and tape sold by these companies. Approximatel $8-million each year are paid by such producers of phonograph records and tapes to the Music Performance Trust Funds.

3. Since I have been Trustee I have never received any payment from the tape duplicators which sell their product through the Plaintiffs. Every time the Plaintiffs sell tapes without paying a royalty to the Music Performance Trust Funds the trust funds are deprived of income, the benefit of which is passed on to the public in general, musicians in the United States and the furtherance of music as a cultural art form.

KENNETH E. RAINE

SWORN TO BEFORE ME this
18th day of November, 1971

LEONARD KORBLIN
Notary Public, State of New York
No. 41-2161175 Queens County
Term Expires March 30, 19...

28

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Affidavit of Paul Simon, Record at 29-31.

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF UTAH, CENTRAL DIVISION

****

TAPE HEAD COMPANY, INC., a Utah corporation, R. A. RIDGES DISTRIBUTING CO., INC., a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED, Plaintiffs, vs. R C A CORPORATION, a/k/a RADIO CORPORATION OF AMERICA, a Delaware corporation, COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation AMERICAN BROADCASTING CO., INC., a New York corporation AMPEX CORPORATION, a California corporation Defendants.	CIVIL ACTION NO. C-255-71 AFFIDAVIT OF PAUL SIMON

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

PAUL SIMON, being duly sworn, deposes and says:

1. I am a member, together with Arthur Garfunkel, of the recording group professionally known as Simon & Garfunkel, which has granted to CBS Records, a division of Columbia Broadcasting System, Inc. ("CBS Records"), the exclusive right to manufacture and sell phonograph records and tapes embodying our musical performances and to utilize our name and likenesses to advertise and promote the sale of such phonograph records.

2. Pursuant to agreements with CBS Records, Simon & Garfunkel have recorded the following albums:

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1. "WEDNESDAY MORNING, 3 A.M."

2. "SOUNDS OF SILENCE"

3. "PARSLEY, SAGE, ROSEMARY & THYME"

4. "BOOKENDS"

5. "THE GRADUATE"

6. "BRIDGE OVER TROUBLED WATER"

3. In order to create the musical compositions and perform such compositions on the albums referred to above, Mr. Garfunkel and I expend vast amounts of time and energy to achieve the results which are embodied on such albums.

4. The agreements between CBS Records and Mr. Garfunkel and I provided for the payment of royalties to us based upon the number of records embodying our performances manufactured and sold.

5. Simon & Garfunkel has never authorized anyone other than CBS Records to manufacture and sell the phonograph records listed above which embody our performances nor have we authorized anyone other than CBS Records to use our name and/or likeness in connection with the sale of such phonograph records and tapes.

6. It is my understanding that certain persons have, in fact, been manufacturing and selling tape cartridges and cassettes embodying the performances of Simon & Garfunkel without the authorization of CBS Records or Simon & Garfunkel.

7. We have never received any royalties with respect to the musical compositions which we have written and are contained on such unauthorized cartridges and cassettes nor have we received any payment for the use of our performances in respect of such tapes.

8. In addition, many of such tapes which I have listened to are of inferior quality in that they do not duplicate accurately the music originally recorded. Accordingly, the purchase of such tapes does not accurately reproduce the recordings originally made by Simon & Garfunkel.

Paul Simon

PAUL SIMON

Sworn to before me this 18th
day of November, 1971.

Marjorie L Enceneat

MARJORIE L. ENCENEAT
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1972

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Affidavit in Opposition of Jack Grossman (and Exhibits), Record at 32-51.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

TAPE HEAD COMPANY, INC., a Utah corporation
R. A. RILES DISTRIBUTING CO., INC., a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED,

Plaintiffs

vs.

R C A CORPORATION, a/k/a RADIO CORPORATION OF AMERICA, a Delaware corporation,
COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation,
AMERICAN BROADCASTING CO., INC. a New York corporation, and
AMPEX CORPORATION, a California corporation

Defendants

CIVIL ACTION NO. C-255-71

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss

JACK GROSSMAN, being duly sworn, deposes and says:

1. I am the President of the National Association of Record Merchandisers, whose membership includes over 175 distributors and retail merchandisers of phonograph recordings doing business throughout the United States. I am also the President of Jack Grossman Enterprises, Inc., a New York corporation with offices at The Warwick, 54th Street and Avenue of the Americas, New York, New York 10019, whose business is the sale of records and tapes at retail in various parts of the United States. I am also the former president of Merco Enterprises, which was and is engaged in the business of merchandising sound recordings throughout the United States.

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2. I make this affidavit in opposition to the application of the Plaintiffs for a preliminary injunction herein.

3. I am fully familiar with the pernicious and proliferating problem of the unauthorized duplication of sound recordings and the sale and distribution thereof throughout the United States. The unauthorized duplication of sound recordings threatens the very existence of the legitimate sound recording industry at all levels, namely, the record manufacturers themselves, the performing artists, musicians, wholesalers and retailers throughout the United States.

4. By reason of the growth and spread of the clandestine unauthorized duplicators, known in the trade as "Tape Pirates" and the distribution of such unauthorized products throughout the United States, the legitimate retailers have in numerous instances been forced out of the marketplace. In most instances the unauthorized duplications, which are foisted upon the public are inferior in quality to those of the legitimate manufacturers. The only protection presently available to the legitimate recording industry and the public, apart from those states wherein by statute, the manufacture or sale of unauthorized recordings have been made a crime, is through the application of the law of unfair competition of the various states where civil suits have been brought against unauthorized duplicators and sellers of such products by manufacturers of sound recordings whose product were so pirated. It is respectfully submitted that if the preliminary injunction sought herein is granted, a chaotic condition will be created in the industry, which not only will prove destructive of the entire recording industry at all levels, but will leave the public unprotected.

5. I annex hereto and make a part hereof, in amplication of the foregoing, a copy of a statement which I delivered before Subcommittee No. 3 of the Committee on the Judiciary of the United States House of Representatives on June 9, 1971 in support of S.646 and H.R. 6927. I fully endorse and adopt said entire statement there presented by me.

JACK GROSSMAN

SWORN TO BEFORE ME this
18th day of November, 1971

[illegible]
Notary Public, State of New York
No. 31-3[illegible]
Qualified in Queens County
Term Expires March 30, 1973

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STATEMENT OF JACK GROSSMAN
PRESIDENT
NATIONAL ASSOCIATION OF RECORD MERCHANDISERS, INC.

HEARING ON S. 646 AND H. R. 6927

SUBCOMMITTEE NO. 3
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

June 9, 1971

Mr. Chairman and Members of the Subcommittee:

My name is Jack Grossman. I am appearing here today as President of the National Association of Record Merchandisers, whose membership includes over 175 distributors and merchandisers of phonograph recordings, as well as over 175 associate members, including manufacturers of record products, suppliers, operators of pressing plants, duplicators, and publishers. I also serve as President of Merco Enterprises which is engaged in the business of merchandising sound recordings throughout the country. Accompanying me today are Mr. James Schwartz, the immediate past president of the Association, Mr. Earl Kintner, of the firm of Arent, Fox, Kintner, Plotkin & Kahn, who serves as general counsel to the Association, and Mr. Charles Ruttenberg a member of the same firm.

POOR

Mr. Chairman, the National Association of Record Merchandisers unqualifiedly supports S. 646, which would create a limited copyright for sound recordings, and urges its favorable consideration by the Subcommittee. In our opinion, if Federal legislation is not enacted in the near future, the tape recording industry, as we know it, will very possibly not be able to survive.

The problem of illegal duplication of recordings existed prior to the advent of tape, tape cartridges and cassettes. At that time such duplication consisted primarily of the practice of counterfeiting phonograph records, including labels, produced by reputable manufacturers, and the sale of such counterfeit recordings as the genuine product. Legislation to deal with this problem was enacted by the Congress in the early 1960's and provided criminal penalties for the fraudulent transportation in interstate commerce of phonograph records bearing forged or counterfeit labels. This legislation had a salutary effect on the counterfeiting problem. With the development of tape, however, the problem of illegal duplication became considerably more acute because of the greater susceptibility of tape to piracy which can be accomplished at little cost, and with relatively simple facilities as compared to those needed for reproduction of records. (Illegal duplication of phonograph records still does take place, however, as shown by EXHIBIT A, attached hereto). Counterfeiting as such is not presently the major problem because those currently involved in tape pirating generally do not attempt to pass off the pirated versions as originals, but instead sell the tapes under their own labels, using legitimate tapes as the basis for the recording of the pirated versions.

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Mr. Gortikov, who has just presented the views of the Recordi Industry Association of America on this matter, has indicated the dimensio of the problem, which, in our view, has reached epidemic proportions. Th attached excerpt from the May 15, 1971 issue of "Business Week", marked EXHIBIT B, I believe you will find particularly informative in this regard. put it simply, legitimate wholesalers and retailers cannot compete with pira merchandise. Illegally duplicated material is being supplied to retailers at price sometimes as low as $2.00, which is about half the cost to the wholesaler of the legitimate product. The reasons for this are clear -- minimal investment by the pirate as against significant costs to the legitimate manuf turing company which pays the performers, musicians' expenses, costs of promotion and the like. As a result, pirated merchandise can be sold, as, for example, in the case of a single tape cartridge, at retail for two or mor dollars less than the legitimate retailer must obtain for his merchandise. Moreover, the illegal duplicator reproduces only the hit recordings so that severely injures the sales of those products which must make up for the sub stantial investments made by the legitimate record companies in records wh prove unsuccessful. Furthermore, the unauthorized duplicator frequently illegally duplicates the best selections from a number of legitimate recordin puts them on one tape cartridge and in that way produces a tape which is not available anywhere else and with which no legitimate retailer can compete.

Discussions with members of our Association around the count indicate very clearly that their loss of tape business is of major proportions

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In a period of greatly increased consumer interest in tape products, increased use of tape equipment in automobiles, and the introduction of cassettes, it would be expected that sales of tape recordings would be steadily and rapidly increasing. Instead, we find that the sales of our distributors are off by approximately 30%. Many retailers are even harder hit. EXHIBIT C, which is a copy of an excerpt from "Billboard" Magazine of April 24, 1971, relates an interview with a Schenectady, New York dealer in which he sets his loss of volume during the past year at 50%. These figures may sound as though the distributor is still in a profit situation, but I can assure you that the rate of attrition is so significant that if it continues our members will be unable to continue in the tape business, except perhaps to provide tape recordings as a convenience for their regular customers.

Several points which have not been mentioned by other witnesses I consider of particular significance.

First, the matter of the quality of pirated recordings. It is true that some illegal duplicators use equipment of good quality and can produce a duplicated tape recording of reasonably good fidelity. Much of the pirating, however, is done by operators who are not that concerned with the quality of the product and we find, in many instances, that consumers who have bought pirated materials, not being sophisticated in this area, are attributing the poor quality of the recordings to the inadequacy of the performers. Comments such as "Mr. X no longer sings as well as he used to" are by no means unusual. This reaction, needless to say, is of serious concern to the creative artist.

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Second, as befits operations of this type, practically all of the financial transactions engaged in by illegal duplicators are cash only. EXHIBIT A, referred to earlier, is quite clear on this point. The pirate by no means wishes to become involved in credit situations, particularly where he may have to pick up and move on short notice. I would venture to guess that, as a result, much of their financial record keeping is less than adequate. I believe you will hear later testimony concerning the uncertainty of payment by them of royalties required by statute to be paid on copyrighted musical compositions.

Third, the unauthorized duplicators are now selling directly to the public via the medium of television which means even greater profit for the pirate. EXHIBIT D consists of a list of cartridges offered for sale via a Philadelphia, Pennsylvania television station at approximately $3.33 per unit, including sixteen selections on one tape representing about eight different labels. Payment is forwarded via the television station to the duplicator.

Fourth, and by no means least, pirating activities are exerting a corrupting influence on businessmen who would prefer to conduct their activities in a legitimate manner. Where a retailer or wholesaler is faced with the question of survival, can we blame him for attempting to compete with the tape pirates on their own level? As a result, many businessmen are being forced to deal in pirated materials in order to stay in business. Some, who have other means of support, have gone out of the tape business entirely. One

POOR COPY

large midwest distributor has informed us that over one hundred of his retail accounts have stopped selling tape recordings because of a desire not to deal in unlawful products and their inability to compete on a legitimate basis.

In my opinion, the logical conclusion of the pirating activities is the ultimate destruction of the tape recording industry through the drying up of investment by record companies in new talents and in the promotion of new recordings. Furthermore, I can assure you that the information from our distributors and retailers which I have referred to above is fully borne out by my own experience as President of Merco Enterprises.

I fully agree with Mr. Gortikov's statement that State legislation and unfair competition actions are not the answer to the problem. At present, there are only six State laws on the subject. Furthermore, such actions, in most instances, merely force relocation of the pirating activity or give the pirate a slap on the wrist. Federal legislation, whereby an injunction against a pirate can be enforced nationwide or a Federal criminal action brought if the violation deliberately continues, is essential if the industry is to survive. Needless to say, this problem is not unique to the United States. It is of world-wide concern and you have already heard testimony to this effect.

In conclusion, gentlemen, I thought you might be interested in seeing exactly the kind of product with which we are dealing. I am holding here an 8-Track Stereo Tape Cartridge produced by Columbia Records, entitled

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"Blood, Sweat & Tears 3", I also have in my possession a Stereo 8 Track cartridge put out by an organization called "Mogul", also entitled "Blood, Sweat and Tears 3." The compositions on each are identical. The Columbia recording represents significant and substantial investment on the part of Columbia Records. The Mogul version represents $0.75 for the cartridge, a few pennies for the tape, another few pennies for the packaging and no investment in performance, promotion, music or otherwise, other than relatively inexpensive duplicating equipment necessary to produce the illegal product.

In the long-run, gentlemen, the consumer will not benefit if pirating activities are not halted. For a while he may get a somewhat inferior product at a lower price, but, in time, the goose that laid the golden egg will be killed and new performers and new talents will not be available to him.

The matter is, in our opinion, of the utmost urgency and we strongly urge your favorable consideration of this legislation.

We will be pleased to answer any questions you may have. Thank you very much for giving us the opportunity to appear here today to present our views on this legislation.

POOR COPY

EXHIBIT A

GODZILLA'S AMERICAN PHONOGRAPH
RECORD EXPORT SERVICE
P.O. BOX 1966
GLENDALE, CALIFORNIA
U.S.A. 91209

Dear Friend:

We are the wholesale distributors of the "TRADE MARK OF QUALITY" line of bootleg albums. We offer these high quality original productions at the lowest and most competitive prices possible. This enables your firm to have a substantial profit margin when reselling this product. We might add, this profit margin is much greater than that of legitimate albums and, due to the nature of being "underground", is very easy to sell on the wholesale and retail levels.

As you may have guessed by this point, we would like to know if your firm would be interested in handling our product? Enclosed you will find a list of the record albums we are currently making available. We hope you find the selection to be satisfactory.

Following is our wholesale price schedule:

	Quantity	Unit Cost
Single Albums:	1 to 99	$2.10
	100 to 499	$1.95
	500 to 999	$1.75
	1000 +	$1.50
Double Albums:	1 to 99	$3.15
	100 to 499	$3.00
	500 to 999	$2.90
	1000 +	$2.50

The quantity is based on the total amount ordered, not the amount of each specific album ordered. Please do not combine single and double albums when figuring the total quantity to be ordered.

We are attempting to combine the lowest possible prices with the fastest possible service in order to supply the huge market for this product. Due to the nature of the albums we cannot operate on a credit basis. Therefore, if your firm does place an order we can honor it one of two ways: (1) Enclose the proper remittance with your order and we will ship via surface or air with the shipping charges being collect, or (2) we can ship via United Parcel (surface or air) with the entire cost and shipping charges C.O.D. The second method is subject to United Parcel service available to your location and is only possible within the U.S.A. If we have the quantities you require in stock we will ship immediatly. If the order is larger than our backstock please allow about five working days before shipment. We are open to suggestions as to methods of transportation.

Thank you for your attention, and we hope this is the beginning of a long business relationship between us.

Sincerely yours,

"Godzilla"

THE BEATLES "THE BEATLES IN ATLANTA WHISKEY FLAT" (One Disc) Twist and Shout, You Can't Do That, All My Lovin', She Loves You, Things We Said Today, Roll Over Beethoven, Can't Buy Me Love, If I Fell, I Want to Hold Your Hand, Boys, A Hard Days Night, Long Tall Sally.

DONOVAN "THE RAINDY RIVER" (One Disc) Jennifer Juniper, Giggle in a Bubbley Dark, Angels Thoughts, Come to Me Now Joyfully, To Love Me, A Medley, The Sun is a Very Magic Fellow, The Reedy River, The Ferrymans Daughter, Atlantis, Lalena, Happiness Runs, A Poem by Yeats, Hey Gyp, To Try for the Sun, Someone Singing, Rules and Regulations, Mellow Yellow.

BOB DYLAN "GREAT WHITE WONDER" (Two Discs) Candy Man, Ramblin' Around, Hezekiah Jones, Ain't Got No Home in this World Anymore, Emmett Till, Ol' Lazarus, Last Orange New Jersey, I'm a Man of Constant Sorrow, New Orleans Rag, If You Gotta Go, Only a Hobo, Killing me Alive, The Mighty Quinn, This Wheel's on Fire, I Shall Be Released, Open the Door Richard, Too Much of Nothing, Nothing was Delivered, Tears of Rage, Living the Blues.

BOB DYLAN "STEALIN'" (One Disc) Can you Please Crawl Out Your Window?, (Slow Version), It Takes Alot to Laugh - It Takes a Train to Cry, Killing Me Alive, If You Gotta Go, She Belongs to Me, Love Minus Zero/No Limit, It's All over Now Baby Blue, Cough Song, New Orleans Rag, That's Alright Mama, Hard Times in New York Town, Stealin', Wade in the Water, Cocaine.

BOB DYLAN "GAW JOHN BIRCH SOCIETY BLUES" (One Disc) Mixed up Confusion, Piano Solo, I'll Keep it with Mine, John Birch Society Blues, Who Killed Davey Moore, The Song it was Long, Willie the Gambler, Ramblin' Round - 900 Miles, Percys Song, Corrina Corrina, In the evening when the Sun Goes Down, Long John.

BOB DYLAN "GAW WHILE THE ESTABLISHMENT BURNS" (One Disc) Ramblin' Down Thru the World, Bob Dylan's Dream, Tomorrows' a Long Time, New Orleans Rag, The 4th time Around, Just like a Woman, Desolation Row.

BOB DYLAN "GAW SEEMS LIKE A FREEZE OUT" (One Disc) California, Lay Down Your Weary Tune, Dusty Old Fairgrounds, Who You Really Are, If I Could do it all over - I'd do it all over You, Tell Me What Your Gonna Do, Restless Farewell, I wanna be your Man, Can You Please Crawl out Your Window, From a Buick 6, Visions of Johanna, She's Your Lover Now.

BOB DYLAN "GAW TALKIN BEAR MOUNTAIN MASSACRE PICNIC BLUES" (One Disc) Quit Your Lowdown Ways, Worried Blues, Corrina Corrina, Lonesome Whistle Blues, Rocks and Gravel, Talkin' Hava Negilah Blues, Adams Spring, Wichita Blues, Talkin Bear Mountain Massacre Picnic Blues, I'm in the Mood for You, Emmett Till, Baby Please Don't Go, Going to New Orleans, Milk Cow Blues.

JEFFERSON AIRPLANE "UP AGAINST THE WALL..." (One Disc) We Can be Together, Volunteers, Eskimo Blue Day, Mexico, Somebody to Love, Wooden Ships, Plastic Fantastic Lover, Emergency, Ballad of You & Me & Pooneil.

JETHRO TULL "MY GOD!" (One Disc) Sossity/Reasons for Waiting, My God!, Love Story, Christmas Song, 17, Sweet Dream, Witche's Promise.

LED ZEPPELIN "LED ZEPPELIN LIVE ON BLUEBERRY HILL" (Two Discs) Immigrant Song, Heart Breaker, Dazed and Confused, What is and What Should Never Be, Moby Dick, Communication Breakdown, Good Times - Bad Times, For What It's Worth, Since I've Been Loving You, Organ Improvisation, Thank You, Out on the Tiles, Blueberry Hill, Bring It on Home, Whole Lotta Love, Let that Boy Boogie Woogie, I'm Movin' On, Think it Over, Lemon Song.

ROLLING STONES "LIVER THAN YOU'LL EVER BE" (One Disc) Carol, Gimmie Shelter, Sympathy for the Devil, I'm Free, Live with Me, Love in Vain, Midnight Rambler, Little Queenie, Honky Tonk Women, Street Fighting Man.

FRANK ZAPPA, THE MOTHERS OF INVENTION, ZUBIN MEHTA AND THE LOS ANGELES PHILHARMONIC ORCHESTRA "200 MOTELS" (One Disc) A suite for Rock Group and Orchestra - Recorded Live on May 15, 1970, in Los Angeles, California.

WE TAKE PRIDE OURSELVES IN MAKING AVAILABLE THESE ORIGINAL PRODUCTIONS OF WORTHWHILE MUSIC. THEY ARE NOT COPIES OF PREVIOUS ALBUMS. GREAT CARE HAS BEEN TAKEN TO PRESERVE THE DIGNITY AND SOUND QUALITY OF EACH MATERIAL INVOLVED AS MUCH AS POSSIBLE. LOOK FOR THE "TRADEMARK OF QUALITY" LABEL WHEN PURCHASING THESE COLLECTORS ITEMS. IT'S YOUR GUARANTEE.

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OTHER BOOTLEG ALBUMS OFFERED THROUGH OUR ORGANIZATION
ALL PRICES REMAIN THE SAME

BOB DYLAN "GUILDHALL ALBERT HALL 1966"(One Disc) Tell Me Mama, I Don't Believe You, Baby Let Me Follow You Down, Just Like Tom Thumb Blues, Leopard Skin Pill-Box Hat, One Too Many Mornings, Ballad of a Thin Man, Like A Rolling Stone,

JIMI HENDRIX "HENDRIX ALIVE" (Two Discs) (Recorded at the Los Angeles Forum) Star Spangled Banner, Purple Haze, Voodoo Child, Spanish Castle, Foxy Lady, Gettin Your Brothers Shoes Together, Gonnin' My Heart Back Together, Room Full of Kirrors, Message to Love, Easy Rider, Machine Gun.

CROSBY, STILLS, NASH, AND YOUNG "OHIO-WOODEN NICKEL" (One Disc) Ohio, Guinivere, Birds, 4 & 20, You Don't Have to Cry, Suite to Judy Blue Eyes, Find the Cost of Freedom, Listen Once Again to my Bluebird, Sea of Madness, Down by the River.

ELTON JOHN " COUNTRY COMFORT" (One Disc) Your Song, Take Me to the Pilot, Country Comfort, Sixty Years On, Border Song, Honky Tonk Woman, Burn Down the Mission, Give Peace a Chance, Finis.

PAUL SIMON "THE PAUL SIMON SOLO ALBUM" (One Disc) Kathy's Song, He was my Brother, Flowers Never Bend With the Rainfall, The Side of a Hill, A Simple Desultory Philippic, Patterns, A Most Peculiar Man, I Am A Rock, A Church is Burning, April Come She Will, Leaves That are Green, The Sounds of Silence.

THE BEATLES "LAST LIVE SHOW" (One Disc) I'm Down, Interview, Introducing Group, Can't Buy Me Love, Baby's in Black, Hard Days Night, Help, I'm Down.

THE BEATLES "THE BEATLES COMPLETE CHRISTMAS COLLECTION" (One Disc) From 1963,1964, 1965,1966,1967,1968,1969. This is a complete collection and is a rare item.

THE BEATLES "RENAISSANCE MINSTRELS VOL. 1" (One Disc) From Me to You, Twist and Shout, This Boy, I Saw Her Standing There, She Loves You 1, I Want to Hold Your Hand, Please Please Me, All my Loving, She Loves You 2.

THE BEATLES "RENAISSANCE MINSTRELS VOL. 2" (One Disc) The Walk, Teddy Boy, Two of Us on the Way Home, I've got a feelin', Long Winding Road, For You Blue, Dig a Pony, (Material from "Get Back Tape") Across the Universe, Inner Light, Let it Be, Don't Let Me Down, Get Back, I'm Down, Instant Karma.

4

MARKETING

The $100-million market in bootleg tapes

Record companies go to court in an attempt to end the fast sales of counterfeited hits

If an enterprising businessman Xeroxed thousands of copies of a best-selling book—say, *The Sensuous Man* or *Love Story*—or ran off duplicates on a basement press and then sold them at half the publisher's regular price, he would be in big trouble. His violation of copyright laws could cost him any profits he made, plus a sizable fine, and he might spend a year in jail.

But all over the country counterfeiters are busy selling exact copies of stereophonic music tapes originally produced by Columbia, RCA, Capitol, and other record companies. They are doing it almost openly and are making more than $100-million a year at it, according to conservative estimates.

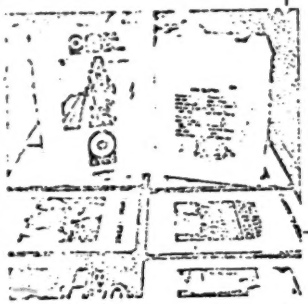
Not surprisingly, the music industry is up in arms about the bootleggers. In the past few weeks, lawsuits were leveled at four oil companies—Texaco, Skelly, Derby, and Champlain—whose service stations in Wichita, Kan., were caught selling tapes. Federal marshals raided a gigantic operation in an industrial park in Phoenix and confiscated 30 tons of duplicating and packaging equipment, ending employment for 100 people who were turning out 80,000 tapes a week. Three Phoenix radio stations advertising the tapes were hit with suits. And Ampex Corp. sued nine Los Angeles retailers for losses allegedly suffered from the stores' sales of bootleg tapes.

Few controls. Donald V. Hall, vice-president of Ampex Music, which markets about one-third of the $350-million worth of stereo 8-track tapes sold annually through legitimate channels, thinks the bootleg operations eventually will cripple the industry. Last year, he explains, record companies sold about $1.8-billion worth of discs and tapes, but most of the profits came from a relatively small number of hit albums—The Beatles, The Partridge Family, Simon and Garfunkel, a big Broadway musical or movie score. To get one hit, a company may have hundreds of albums that die in the stores.

"Then the bootleggers rush in to copy the hits, creaming profits right off the top," says Hall. "They cut into your sales, have no development expenses, and pay no royalties to anyone. It is a very profitable business." The Phoenix plant, which called itself National Mfg. Co., was said to have netted more than $2-million in five months of operation.

What makes it possible for the bootleggers to operate—and frustrating for the record companies—is the lack of regulation against copying "mechanical reproductions" of live performances. Only California and New York have criminal laws against the practice and classify it as a misdemeanor. And even these laws are new. Elsewhere, civil actions for damages and injunctions can be filed, but the bootleggers have become adept at shutting up shop and reopening later under a new name.

Operation. Becoming a tape pirate is relatively simple. Small record stores—



"mom and pop" retailers—can purchase an inexpensive duplicating machine for $200 or so. Blank tape cartridges are available for as little as 75¢ each in quantities of a few hundred. "A guy can hire school kids at $1.25 an hour to knock out copies in the back of the store," says Alan Bayley, president of GRT Corp., which makes tape albums for 67 different record companies. "He sells them at $3 or $4 each to customers." GRT, on the other hand, sells its tapes for $1.50 each to a distributor, who resells them for $1.25 to retailers, who charge the public $6.95 each. "A store can order half-a-dozen tapes of a hit album from us and use them to duplicate a hundred copies," Bayley says, "and then try to return the originals for credit because they didn't sell."

The "mom and pop" thieves are a minor annoyance. More worrisome are the large, well-financed tape pirates who merchandise and promote their wares with skill and aplomb and are sometimes backed by organized crime. In addition to turning out hundreds of thousands of tapes in small factories,

A pirated copy (right) of best-selling album skimps on packaging, artwork and carries no manufacturer's label

many bootleggers install display racks in stores, service stations, and other outlets and contract to keep them filled. They also print catalogues and send salesmen on the road. In Cleveland, John Cohen, who runs a chain of 20 Disc Records stores, received a catalogue and sample tapes from a Hempstead outfit calling itself Music City Distributing, Inc. The company offered copies of top-selling albums at $2 each and signed its sales letter "Your friendly bootlegger."

Cohen turned down the offer, but knows that other retailers are not so susceptible. "There's no question that we're losing business to a lot of these tape outlets springing up all over," he says. Albert Berman, manager director of Harry Fox Agency, Inc., which collects royalties for several thousand music publishers, agrees. "Most of these people operate with the full knowledge that they are selling an illegal product," he says, "but because of ignorance and naiveté of some of the record chains is surprising. How can they claim they can't recognize a bootleg

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record or tape when they are offered it at a ridiculously low price, are forced to pay cash, usually receive a product of inferior quality, and deal with someone who has no listed phone number, no business address, and in some cases no personal contact with the retailer." Two defendants in the Phoenix case sold tapes from a truck at weekend

'With an investment of about $20,000, you're in tape bootlegging in a big way'

sales held in shopping center parking lots, and kept moving, Berman says.

Sideline. In New York, an employee of a large industrial company has been passing out mimeographed order blanks to fellow employees and supplying them with tapes of Perry Como, Elvis Presley, and 50 other artists at $3.25 each. "I pick up the orders every Saturday from a 'wholesaler,'" he explains. "The tapes cost me $2 each, and I sold 150 last week." Asked about the quality of the recordings, he insists that it is excellent. "We sell on a money-back guarantee, and these are the real thing—not bootleg tapes." What he means is that his tapes are professionally copied from commercial originals, not from live performances.

Opera and concert buffs frequently smuggle tiny recorders into theaters and music halls to tape live performances, and poor-fidelity copies sometimes show up under the counter at select retail outlets. Similarly, imperfect rehearsal recordings—ones that an artist ordinarily does not want released for sale—may be stolen, duplicated, and made quietly available. Alan Rich, music critic for *New York* magazine, recently devoted a page to praising the industrious people who do such work. He pointed out that he was able to buy a tape of a little-known Off-Broadway musical only because of a pirate.

"Hah," says Berman. "I'd like to hear him if he found his columns were being reprinted in other magazines. What about the publishers, writers, and performers who get nothing for their efforts?" The Fox Agency estimates that publishers alone are losing upwards of $10-million a year in royalties due to them from bootleg tapes. Ordinarily, a publisher gets 2¢ for each song included in each album.

Hard to beat. The Fox Agency and the National Assn. of Record Manufacturers have been leading the fight on the pirates, but Berman says the task is difficult. "We can spend $5,000 to bring a civil suit, put a guy out of business with a $250 fine, and have him reopen a few days later somewhere else." Ampex Music's Hall notes that mobility is easy because tape duplicating equipment is smaller and less expensive than a 15-ton press needed to make counterfeit phonograph records. "With an investment of $20,000 to $50,000, you're in tape bootlegging in a big way," he says.

Ampex Music, in addition to selling tape versions of the record albums of some 40 different manufacturers, is a major supplier of blank tape cartridges and recording equipment. It recently announced that it would not sell to suspected bootleggers. "If their letterhead has a skull and crossbones on it, it's no deal," says an Ampex Music executive, who admits that it is not easy to find out why customers want equipment.

Ralph Gleason, the jazz and rock-music critic and an executive of Fantasy Records, notes that the company has lost money because of bootleg sales of copies of its hit albums by Creedence Clearwater Revival. One bootlegger even improved on the originals by pulling the best songs from several albums and putting them on one tape, *The Best of Creedence*. "You can cut off supplying the regular record stores that also sell bootlegs," says Gleason, "but it's hard to get at all the service stations and places selling tapes along with steplights and rear-view mirrors."

Mass attack. GRT's Bayley thinks the legitimate music industry has to move in several directions to [illegible] the pirates. A massive advertising campaign should be undertaken to let the public know that bootleg tapes not only deprive artists and publishers of their just deserts, he says, but the tapes often are of inferior quality. "We need an industrywide trademark to identify legitimate products," he adds, pointing out that authentic tapes are nicely packaged with full-color illustrations whereas bootleg tapes generally have a plain printed label listing the performers and songs and no maker's name or address.

There is some talk in the industry of technological developments that would make it impossible for a tape to be copied. One possibility is a high frequency tone inaudible to the ear but destructive to a copying recorder. But real relief has to come from Congress.

A revised copyright law has been proposed by Senator John McClellan (D-Ark.) that would extend protection to recordings. The bill has gone through the Senate and is scheduled for hearings in the House, where lawyers for big bootleg operations are prepared to testify that they provide a public benefit by selling low-cost tapes.

"If the McClellan bill fails," says Berman, "the manufacturers in the industry will have to come to one or the other. They have partners. We're really fighting a last ditch effort right now." ■

EXHIBIT C

BILLBOARD -- April 24, 1971

Dealer's View of Bootlegging: 50% Volume Loss; Seeks Law

By ROBERT SOBEL

NEW YORK—The following interview of a legitimate record dealer, Lauren Grandy, manager of Apex Music Korner, 348 State St., Schenectady, N.Y. by a Billboard staffer illustrates the problems the dealer faces in his battle to survive bootlegger competition.

Q. What product is currently being bootlegged?

A. A big variety. There are some Columbia, some Ampex, some RCA.

Q. Can you give some specific titles or artist's names?

A. Well, on RCA, "Portrait of My Woman," by Eddy Arnold, and a couple of the Beatles tapes. I sold two on Columbia but I don't recall them offhand. Copies of those were picked up incidentally, and turned over to the Columbia district manager just recently.

Q. Is there any traffic being taken away from your store because of bootlegging?

A. There's no question about it. When you have people around you selling tapes anywhere from $2.98 to $3.75, which legitimately cost you over $4.00, you're losing business. Not only that—the artists are losing business and the publishers are losing business—the whole industry.

Q. How long has this bootlegging been going on?

A. Well, my first direct experience with it was last summer. A gentleman called me from Phoenix and offered me some first-rate tapes that were ridiculously low-priced and gave me a WATS line number and told me he shipped from California. When I asked him for his address the first time he wouldn't give one, the second time he called he gave me one in the Bahamas and I said, "Is this legitimate?" That was the end of it.

Q. Can you estimate how much this has diminished volume over the year in your store?

A. I would say that it's cut into our tape business at least 50 percent.

Q. How much business do you usually do in one year?

A. In excess of $100,000.

Q. Is this bootlegging mainly in tapes or is it in records as well?

A. Very little in records in this area. Primarily, it's in tape.

Q. What is the contact procedure used by these bootleggers?

A. He comes up and down the Mohawk Valley on an average of once a week now. He shows samples of the tape and admits openly that they are what he calls "underground" custom-grade tapes from the top artists. But he says they're also "custom recordings," tells the dealers it's a chance for them to make more money.

Q. Now, it's all out in the open actually, isn't it?

A. Very much so.

Q. He's given you his name and the company and a phone number, I understand. Is there a catalog involved?

A. Well, he had one he showed me, but he didn't have a copy that he was willing to leave.

Q. Do you know of any drops that he's actually made elsewhere?

A. Yes. There are definitely two stores in the area.

Q. The Schenectady area? In town?

A. Yes, in town, right in Schenectady. He also mentioned that there were stores up and down the Mohawk Valley that were using his product.

Q. That's in the tri-city area, isn't it?

A. Well, between Utica and the tri-cities. The entire Mohawk Valley. About a 150-mile corridor.

Q. Is he the only one that you know of that's been doing this or has there been someone else?

A. It's the only one I've had recently. I've had a couple of flyers from people out of town.

Q. At what price is the bootlegger selling the tapes to you?

A. $2.75 unless you buy 100, then there's something like a 10 percent discount on top of that.

Q. And this is across the board regardless of what product it is?

A. Right.

Q. Do you feel that the other dealers you mentioned who are buying this product are doing it in competitive stores?

A. I think they probably feel this way: "Here's a chance to put one up on the other guy and give an extra buck and still sell it for a lot less to draw the trade my way." I mean, it's a hell of a competitive business—it always has been, but like legitimate competition—I don't mind anybody trying to dump merchandise because I had the opportunity to do that, too.

Q. Have you tried to combat bootlegging in any way?

A. Well, let me put it this way—anything I can possibly do—any evidence I have that will help put an end to this—I'll be very happy to furnish and I've had some other friends, including a one-stop operator that I've talked to about it that have expressed their willingness to cooperate as well.

Q. What about the RIAA? Have you tried them?

A. On my first attempt to reach anybody I felt that I might better work through you and the FBI Agency and the FBI. I felt these were the authorities best equipped to handle it.

Q. Have you thought about banding together with them. Perhaps some kind of a local dealer arrangement. You mentioned the one-stops, is there any thinking of a cooperative nature to beat the bootleggers?

A. Well, the tri-city areas actually has only six of us left. One time there were seven in Schenectady alone. Now there are only six of us left in the tri-cities. The rest are run by the chain stores, racks and so forth.

Q. What is their general feeling?

A. Frankly, in the past I've tried to talk to a few of the gentlemen involved in those operations and I haven't found that it even paid to start a discussion with them. I think they have the reaction because they're much happier to have them than to have to fight them. At least myself I've talked to RCA's Eastern district representative, Jack Pell, and he was very happy to get my information and very unhappy to see it happening in his immediate area, of course. In fact, he left Schenectady for the Utica-Syracuse area this morning and he's out that way looking around now and he also asked me if I'd be willing to buy a few tapes containing his product to be furnished as evidence to his company. I'd take them and I'd be very happy to. Also, when I found out that two of the local stores were carrying the product, I called the local distributor of RCA. They said they would send men over to pick up samples of any counterfeit bootleg merchandise they could find in those two stores.

(Continued)

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Q. Do you have any other thoughts on how to combat bootlegging, other than those previously mentioned?

A. Yes, but the law isn't enforced and there aren't too many of us left who are a family store, catalog-type dealer. The bigger element seems to be primarily interested in using the record and tape department as a traffic promotion item. For instance, stores that we have right in our vicinity here. Two or three days a week they'll sell tapes at ridiculous prices and records at ridiculous prices just to promote store traffic and my thought along these—I don't know what their basic policy is, but I've seen some of the counterfeit Beatles tapes from South America in some of their locations.

Q. Do you think big stores would carry the bootleg items, if given the chance?

A. Yes. I've seen them do it in the past.

Q. You have seen them do it?

A. As I say, the South American reprints of Beatles tapes are just as an example. In fact, I bought two of them and I have them right here. They're from Caracas, Venezuela.

Q. How much did they cost you?

A. $2.50.

Q. I would like to get back a little more on what you would like to see in fighting bootlegging.

A. Of course, it's ridiculous to hope for unity among the dealers. I don't think there is a possibility. So I think concretely I would like to see a legitimate law with teeth in it that would protect the composer, the publisher, the singer and the retailer. Not only on the local level, that is, in our locale—New York State—but something incorporated in the Federal copyright law—if possible.

Q. Well, they are trying to do something like that in the piracy situation. Could it be done regarding bootlegging?

A. Yes, but it would require that the publishers, ASCAP, BMI and everybody legitimately interested in the industry all get together, which hasn't been too easy in the past, as you well know.

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EXHIBIT D

STEREO 8
P. O. BOX 437
FEASTERVILLE, PA. 19047

Tunes advertised on * TV

1. CHICAGO III

a. Mother
b. Lowdown
c. Elegy: When all the laughter dies in sorrow.
d. What else can I say.
e. I don't want your money.
f. Fallin out.
g. Dreaming Home /Free/ off to work.
h. The approaching storm.
i. Happy cause I'm going home.
j. Motorboat to mars/ Free country
k. At the sunrise.
l. Loneliness is just a word.
m. Progress
n. Once upon a time.
o. A hard rising morning without breakfast/ mornin' blues again.
p. Canon
q. Flight 602
r. Sing a mean tune kid.
s. Man vs. man. The end.

2. PEARL - Janis Joplin

a. Cry baby
b. Me and bobby McGee.
c. Mercedes benz
d. Trust me.
e. Get it while you can.
f. Half Moon
g. Buried alive in the blues
h. A woman left lonely (Part I)
i. A woman left lonely (Part II)
j. Move over
k. My baby

3. TUMBLEWEED CONNECTION - Elton John

a. Ballad of a well-Known gun.
b. Come down in time
c. Son of your father
d. Country comfort
e. My father's gun
f. Love story
g. Where to now St. Peter
h. Talking old soldiers
i. Amoreena
j. Burn down the mission

(*The name of the television station has been deleted).

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STEREO 8
P. O. BOX 437
FEASTERVILLE, PA. 19047

1. LOVE STORY - Original Sound Track.

   a. Theme form Love Story
   b. I love the phil
   c. The Christmas trees
   d. Search for Jenny
   e. The Long walk home
   f. J.S.Bach
   g. Mozart
   h. Bozo barrett
   i. Skating in central park
   j. Snow frolic
   k. Theme from Love Story (Finale)

2. IT'S IMPOSSIBLE - Perry Como

   a. It's Impossible
   b. Everybody is looking for an answer
   c. I think I love you
   d. Raindrops keep fallin' on my head
   e. Snowbird
   f. Close to you
   g. El Condor Pasa
   h. Happiness comes, Happiness goes.
   i. Weve only just begun
   j. A House is not a home
   k. Seattle
   l. Something

3. SWEETHEART - Engelbert Humperdinck

   a. Sweetheart
   b. California Maiden
   c. Woman in my life
   d. I'll be your baby tonight
   e. Take me for now Love
   f. The first time ever I saw your face
   g. For the good times
   h. Put your hand in the hand
   i. When there is no you
   j. The first time I ever saw your face
   k. Santa Lija
   l. Live and just let live

STEREO 8
P. O. BOX 437
FEASTERVILLE, PA. 19047

1. ROCK * ALL STAR HITS * VOL. I

a. If you could read my mind - Gordon Lightfoot
b. Me & Bobby McGee - Janis Joplin
c. For All We Know - Carpenters
d. Have You Ever Seen The Rain - Creedence Clearwater Revival
e. D.O.A. - Bloodrock
f. Cried Like A Baby - Bobby Sherman
g. One Bad Apple - The Osmonds
h. Sweet Mary - Wadsworth Mansion
i. What is Life - George Harrison
j. Help Me Make It Thru The Night - Sammi Smith
k. She's A Lady - Tom Jones
l. 1900 Yesterday - Liz Damon
m. Woodstock - Crosby, Stills & Nash
n. Temptation Eyes - The Grass Roots
o. No Love At All - B.J. Thomas
p. Wild World - Cat Stevens

2. COUNTRY WESTERN * ALL STAR HITS * VOL. I

a. Bridge Over Troubled Waters - Buck Owens
b. How Much Can She Stand - Conway Twitty
c. The Arms of a Fool - Mel Tollis
d. L.A. International Airport - Susan Raye
e. Rose Garden - Lynn Anderson
f. Bar Room Talk - Del Reeves
g. We Sure Can Love Each Other - Tammy Wynette
h. Knock Three Times - Billy C. Craddock
i. Help Me Make It Through the Night - Sammi Smith
j. I Won't Mention It Again - Ray Price
k. After the Fire is Gone - Conway Twotty
l. Looking Out My Back Door - Buddy Alan
m. For The Good Times - Ray Price
n. A Women Always Knows - David Houston
o. It Wasn't God Who Made Honky Tonk Angels - Lynn Anderson
p. Raining in my Heart - Hank Williams

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Affidavit of Walter L. Dean, Record at 57-62.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

TAPE HEAD COMPANY, INC., a Utah corporation R. A. RIDGES DISTRIBUTING CO., INC., a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED, Plaintiffs, vs. R C A CORPORATION, a/k/a RADIO CORPORATION OF AMERICA, a Delaware corporation, COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation, AMERICAN BROADCASTING CO., INC., a New York corporation, and AMPEX CORPORATION, a California corporation Defendants	CIVIL ACTION NO C-255-71 AFFIDAVIT

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

WALTER L. DEAN, being duly sworn, deposes and says:

1. I am presently the Executive Vice President of CBS Records, a division of Columbia Broadcasting System, Inc., a New York corporation.

2. Defendant, Columbia Broadcasting System, Inc., through its CBS Records division (hereinafter referred to as "CBS Records") is engaged in the purpose of manufacturing and selling recordings of musical and other performances on disc phonograph records (hereinafter referred to as "records") and

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magnetic tapes (hereinafter referred to as "tapes"). CBS Records is at present one of the leading manufacturers of such recordings in the United States. The name and reputation of CBS Records as a manufacturer of musical recordings of high artistic and technical quality are widely and favorably known through the United States and the world. Its recordings are sold under various labels, such as Columbia, Epic and others.

3. CBS Records has entered into agreements with various well known and leading musical performers and groups of performers (hereinafter collectively referred to as "artists") by which CBS Records has obtained the exclusive right to manufacture and sell records and tapes embodying their performances. By the terms of such contracts, each of the artists have granted to CBS Records their sole, exclusive and complete right to manufacture and sell records and tapes embodying recorded performances rendered by that artist, and CBS Records has acquired the complete ownership of each such recorded performance as embodied on such records and tapes as well as the sole, exclusive and complete right to use the name and likeness of each such artist in connection with the sale and advertisement of such records and tapes. Among the artists with whom CBS Records has entered into such contracts are Johnny Cash, Simon & Garfunkel, Ray Conniff, Blood, Sweat & Tears, Tammy Wynette, Lynn Anderson, Santana and Chicago who in their respective styles of performance have achieved great fame and recognition and whose recordings are in great demand.

4. Records and tapes manufactured and sold by CBS Records are conformed to the highest musical and technical standards. They are produced and manufactured by the use of microphones,

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sound mixing control systems, tape recording machines, disc recording lathes and many other items of specialized electronic and mechanical equipment purchased or leased by CBS Records at great cost, and maintained in good operating condition at great expense. Additionally, the master recordings ("masters") from which such records and tapes are manufactured, are produced at great expense to CBS Records at record studios owned and operated by CBS Records and with the labor of highly skilled musicians, engineers and other personnel paid by plaintiff.

5. Upon the sale of records and tapes manufactured and sold by CBS Records, and pursuant to its contract with artists, CBS Records becomes liable to pay royalties to the artists whose performances are embodied on such records and tapes. In addition, CBS Records becomes liable under various laws and contracts, to make other payments, including payments to the proprietors of the copyrights of the musical compositions embodied in such recordings, union scale payments to musicians and artists, and payments to various trusts established for the benefit of artists and musicians. CBS Records pays all such royalties and other payments when and as they become due and payable.

6. Certain records manufactured and sold by CBS Records embody performances of several selections by the same artist. Such records are popularly known as "album". CBS Records uses great skill and judgment, based upon its experience in the manufacture and sale of phonograph records, in selecting the performances to be so combined in each album, and in selecting the title of each album. For each such album a paper-board

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container is prepared called the "Jacket" on the front of which (i.e., the "cover") appears the name of the artist, the title chosen by CBS Records for that album, and other matters, including art work, produced or purchased and paid for by CBS Records. The jackets and covers are produced or purchased by CBS Records at great expense. Persons who generally purchase albums and who constitute the market for such albums request and order albums by the title given to them by CBS Records and the public has come to associate such album titles with CBS Records, and its trade name and trademark under which each such album is sold and with the artist whose performances are embodied on the album so titled, which are manufactured and sold by CBS Records.

7. CBS Records expends large sums of money to produce the original masters from which its albums are manufactured. For example, CBS Records has expended in excess of the following amounts of money to produce the original masters for which the following albums were manufactured:

Album	Amount
"Blood, Sweat & Tears 3"	$125,000.00
"Bridge Over Troubled Water"	76,000.00
"Abraxas"	50,000.00
"Johnny Cash At San Quentin"	20,000.00
"Santana"	25,000.00
"Andy Williams' Greatest Hits"	15,000.00
"Love Story"	55,000.00
"Rose Garden"	9,500.00

8. CBS Records has, from the date many of its albums

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were originally released, manufactured and sold a large quantity of 8-track tape cartridges and cassettes of each of those albums, and such cartridges and cassettes are packaged in an attractive and distinctive container which contains the title of the album, the name of the artist whose performances are embodied thereon, CBS's trademark and trade name and a reproduction of the art work used on the cover of the album.

9. From through the present time, CBS Records has expended in excess of to advertise all recordings manufactured and sold by CBS Records. Such sum was expended for the purpose of familiarizing the public with CBS Records trademark and trade name, the names of the artists with whom CBS Records has recording contracts and the titles of the albums and tapes embodying the performances of such artists manufactured and sold by CBS Records. As a result of such advertising and of the expenditure of such sum of money, the public has come to associate CBS Records and its trademark and trade names and the names of such artists with the titles chosen by CBS Records for those albums.

10. CBS Records has not given any of the plaintiffs consent to offer for sale or sell any tapes which have been duplicated without the permission or consent of CBS Records.

11. CBS Records has not given any of the plaintiffs consent to duplicate and transfer to magnetic tapes or any other device or have any part of any recorded performance contained or embodied in any album or any other phonograph record or

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any tape manufactured and sold by CBS Records.

12. CBS Records has not given any of the plaintiffs consent to use in connection with the sale of any unauthorized duplicated tape, the name of any artist under contract with CBS Records or any titles of any album manufactured or sold by CBS Records or any imitation of the title of any album manufactured or sold by CBS Records.

WALTER L. DEAN

Sworn to before me this 18th
day of November, 1971.

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Affidavit of Rocco M. Laginestra, Record at 63-67.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT

OF UTAH, CENTRAL DIVISION

TAPE HEAD COMPANY, INC., a Utah corporation R. A. RIDGES DISTRIBUTING CO., INC., a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED, Plaintiffs, vs. RCA CORPORATION, a/k/a RADIO CORPORATION OF AMERICA, a Delaware corporation, COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation, AMERICAN BROADCASTING CO., INC., a New York corporation, and AMPEX CORPORATION, a California corporation Defendants	CIVIL ACTION NO C-255-71 AFFIDAVIT

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

ROCCO M. LAGINESTRA, being duly sworn, deposes and says

1. I am President of RCA Records, a division of National Broadcasting Company, Inc., a Delaware Corporation and a wholly-owned subsidiary of RCA Corporation, a Delaware Corporation and one of the defendants named herein.

2. RCA Records is, and at all times material hereto, has been engaged in the manufacture and sale of sound recordings in the form of disc and magnetic tape in which have been embodied by the skill and expense of RCA Records, musical performances of noted performing artists. RCA Records is one of the leading manu-

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facturers of such recordings, and its name and reputation are widely and favorably known throughout the United States.

3. RCA Records has entered into written contracts with various noted performing artists and groups of artists, including Elvis Presley, Jefferson Airplane, the Friends of Distinction, John Denver, Amos Moses and The Guess Who. By the terms of said contracts, RCA Records has been granted by each of said artists and groups of artists the exclusive right to manufacture and sell sound recordings embodying performances rendered by them, and RCA Records has acquired the complete ownership of the artists' performances as rendered and so embodied, as well as the exclusive right to use the name of the artist or artists in connection with the sale of such recordings.

4. In the course of RCA Records' business and pursuant to said contracts, said performing artists have appeared from time to time at recording studios owned or operated by RCA Records and there rendered performances. By the use of costly microphones, sound mixing control systems, tape recording machines, disc recordi lathes, and other pieces of specialized electronic equipment which have been purchased by RCA Records, and with the labor of highly sk musicians, engineers and other personnel employed and paid by RCA Records, RCA Records has embodied the performances thus rendered up master recordings. From said master recordings, RCA Records has manufactured, at factories owned and operated by it, and by the use of costly machinery and apparatus purchased by RCA Records for the purpose, and by the labor of persons employed and paid by RCA Record recordings for sale. RCA Records invests approximately $3,000,000 annually in recording equipment and other facilities necessary to th production of high quality sound recordings. RCA Records employs ov 4,000 persons and has an annual payroll in excess of $30,000,000.

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5. Upon the sale by RCA Records of such a recording so manufactured, RCA Records becomes liable, pursuant to its said contracts, to pay a royalty with respect to said performances as thus embodied. In addition, upon such sale, RCA Records becomes liable, by federal law and by contracts, to pay fees to each of the owners of the copyrights in the musical compositions used in the recorded performance. In addition, upon such sale and pursuant to written contracts with the American Federation of Musicians and the American Federation of Television & Radio Artists, RCA Records becomes liable to pay to designated trustees fees used for the benefit and welfare of performing artists and musicians. RCA Records satisfies each of its said liabilities by paying, when due, all of said royalties, license fees and trust fees. For the year 1970, RCA Records' payments of royalties to artists have exceeded $6,000,000, RCA Records' payments of license fees have exceeded $7,000,000, and RCA Records' payments to the trustees designated by the American Federation of Musicians and the American Federation of Television & Radio Artists have exceeded $1,000,000. These payments are in addition to the very substantial cost of flat fee payments made to musicians and others in accordance with RCA Records' contracts with the appropriate union, which in 1970 exceeded $2,000,000.

6. Certain of the recordings thus manufactured by RCA Records embody performances by the same artist or artistic group of numerous selections chosen and arranged on the recordings in accordance with RCA Records' judgment and experience as to commercial appeal. Such recordings are popularly known as "albums". For each such album, RCA Records prepares a paperboard container called a jacket, on the front of which, i.e., the "cover" is set forth, among other things, the name of the performing artist or artistic

group and a title chosen by RCA Records for the album as a whole in accordance with RCA Records' judgment and experience as to commercial appeal. In the market place, albums are requested and ordered by prospective purchasers by the titles given them by RCA Records, and said titles are associated by the public with RCA Records and with the artists or artistic group whose performances are embodied in the albums so titled.

7. In order to popularize RCA Records, the performing artists and artistic groups with whom it has recording contracts, and the recordings embodying their performances manufactured by RCA Records pursuant to said contracts, RCA Records spends large sums of money in advertising which associates RCA Records' name and the names of said artists and artistic groups with the titles chosen by RCA Records for the albums embodying such performances, and with the titles of the selections contained on the single records embodying such performances. Within the last three years, RCA Records has spent in excess of $5,000,000 in such advertising.

8. RCA Records has from the date of release of the foregoing albums, manufactured and sold a large quantity of 8-tract tape cartridges and cassettes of each of those albums, and such cartridges and cassettes are packaged in an attractive and distinctive container which contains the title of the album, the name of the artist whose performances are embodied thereon, RCA Records' trademark and trade name and a reproduction of the artwork used on the cover of the album.

9. RCA Records has not given any of the plaintiffs consent to offer for sale or sell any sound recordings belonging to RCA Records which have been duplicated without the permission or consent of RCA Records. RCA Records has not given any of the plaintiffs consent to duplicate and transfer to magnetic tapes or any other device, any part of any recorded performance contained or embodied in any album, or any other sound recording manufactured and sold by RCA Records.

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10. RCA Records has not given any of the plaintiffs consent to use in connection with the sale of any unauthorized duplicated sound recording, the name or likeness of any artist under contract with RCA Records or any titles of any album manufactured or sold by RCA Records or any imitation of the title of any album manufactured or sold by RCA Records.

11. RCA Records has not commenced, since the passage of Public Law 92-140 on October 15, 1971 (S.646), any actions against any persons for the manufacture and sale of unauthorized duplicated sound recordings owned by RCA Records. RCA Records is now actively prosecuting only one civil claim for the unauthorized duplication of sound recordings, Dutchess Music Corporation et al v. Martin Stern et al, U. S. D. C. Arizona.

Rocco M. Laginestra

Sworn to me this 18th day
of November, 1971

JULIAN P. COLLARD
NOTARY PUBLIC, State of New York
No. 31-0767513
Qualified in New York County
Commission Expires March 30, 1973

Affidavit of Paul M. Wolsk, Record at 72-76.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT

OF UTAH, CENTRAL DIVISION

TAPE HEAD COMPANY, INC., a Utah corporation R.A. RIDGES DISTRIBUTING CO., INC., a Utah corporation, and all other persons IN A CLASS SIMILARLY SITUATED, Plaintiffs, vs. R C A CORPORATION, a/k/a RADIO CORPORATION OF AMERICA, a Delaware corporation, COLUMBIA BROADCASTING SYSTEM, INC., a New York corporation, AMERICAN BROADCASTING CO., INC., a New York corporation, and AMPEX CORPORATION, a California corporation Defendants	CIVIL ACTION NO C-255-71 AFFIDAVIT

STATE OF NEW YORK)
)ss
COUNTY OF NEW YORK)

PAUL M. WOLSK, being duly sworn, deposes and says:

1. I am an attorney for Ampex Corporation ("Ampex"), a California corporation, and I am fully familiar with the facts herein alleged.

2. Ampex, through its Music Division, is engaged, inter alia in the manufacture and sale of prerecorded magnetic tapes ("Tapes"), including 8-track stereo tapes, embodying the performances of musical compositions by various and well-known

artists and musicians. The Tapes manufactured and sold by Ampex are widely and favorably known to be of the highest artistic and technical quality.

3. Ampex has acquired the right to manufacture and sell the Tapes pursuant to license agreements with many leading record companies (the "Ampex Licensors"). The Ampex Licensors have acquired the exclusive ownership of the master recordings embodying the performances of the artists and musicians from which the Tapes are derived pursuant to talent agreements with the artists and musicians and the exclusive right to authorize the manufacture and sale of Tapes embodying their performances. The Ampex Licensors have also acquired the exclusive right pursuant to the talent agreement to authorize the use of the names and likenesses of the artists and musicians upon the containers of the Tapes and Ampex has acquired the right to do so from the Ampex Licensors in connection with the manufacture, sale and advertising of the Tapes.

4. The master recordings embodying the performances of the artists and musicians from which the Tapes are derived, were produced by the Ampex Licensors at great cost and expense with the labor of highly skilled musicians, engineers and other personnel engaged by the Ampex Licensors. Ampex and the Ampex Licensors have expended substantial sums of money to advertise and promote the Tapes for the purpose of causing the public to, and the public has come to, associate the names of Ampex,

the Ampex Licensors, and the artists and musicians whose performances are embodied in the Tapes with the titles chosen by the Ampex Licensors for those Tapes.

5. Upon information and belief, the plaintiffs herein have appropriated and pirated the property of the Ampex Licensors and Ampex by offering for sale and selling, at greatly reduced prices, prerecorded tapes embodying the master recordings owned by the Ampex Licensors (the "Pirated Tapes") to the public commercially for their own profit. Upon information and belief, the recorded performances embodied in the Pirated Tapes were transferred and duplicated onto the Pirated Tapes, without permission or authority from Ampex or the Ampex Licensors and contain exactly the same recorded performances embodied on the Tapes manufactured and sold by Ampex. Upon information and belief, included among the titles of the Pirated Tapes and the names of the artists and musicians whose performances are embodied thereon which the plaintiffs herein are offering for sale and selling to the public commerically for their own profit are set forth in Exhibit A, attached hereto and made a part hereof.

6. Upon information and belief, the plaintiffs herein publish and disseminate, both orally and in writing, the titles chosen by the Ampex Licensors for the Tapes and the names of the artists and musicians whose performances are embodied therein.

7. The plaintiffs herein have not received the permission or authority of Ampex or the Ampex Licensors to offer for sale or sell the Pirated Tapes and no payments whatsoever have been made to the Ampex Licensors, the artists and musicians whose

performances are embodied therein and/or the American Federation of Musicians Special Payment Funds and Trust Funds, on account of the sale of the Pirated Tapes.

8. Upon information and belief, the Pirated Tapes that the plaintiffs herein are offering for sale and selling are distorted and of inferior quality compared with the Tapes manufactured and sold by Ampex. These Pirated Tapes are far below the quality generally associated with the Tapes manufactured and sold by Ampex.

9. Ampex and the Ampex Licensors have cooperated with the federal, state, city and county law enforcement agencies to prevent the manufacture and sale of Pirated Tapes throughout the United States, culminating in criminal prosecutions in New York, California, Texas and elsewhere. On April 22, 1971, Ampex and the Ampex Licensors initiated a civil action in the Superior Court of the State of California for the County of Los Angeles against nine distributors and sellers of Pirated Tapes and obtained a Temporary Restraining Order on that date against all of the defendants. On May 5 and June 2, 1971, Preliminary Injunctions were granted against all of the defendants.

Paul M. Wolsk
PAUL M. WOLSK

Sworn to before me this
18th day of November, 1971

Teresa McManus

TERESA McMANUS
Notary Public, State of New York
No. 24-7065785
Qualified in Kings County
Term Expires March 30, 1972

EXHIBIT "A" TO AFFIDAVIT OF PAUL WOLSK

Names of artists and performers licensed to Ampex which are included among unauthorized tapes offered by plaintiffs:

Reprise Records (Licensor to Ampex)

Joni Mitchell - "Blue"

Atlantic Records (Licensor to Ampex)

Aretha Franklin - "Aretha's Greatest Hits"

Crosby, Stills, Nash & Young - "Four Way Street"

Bell Records (Licensor to Ampex)

"The Partridge Family"

Cotillion (Licensor to Ampex)

Emerson, Lake and Palmer - "Tarkus"